

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Laura Mejia,

Plaintiff,

v.

Midland Credit Management, Inc.; and DOES
1-10, inclusive,

Defendants.

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Civil Action No.: 1:14-cv-10110

COMPLAINT

JURY TRIAL DEMANDED

For this Complaint, the Plaintiff, Laura Mejia, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA"), and the invasions of Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to collect a consumer debt.

2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendants transact business here and a substantial portion of the acts giving rise to this action occurred here..

PARTIES

4. The Plaintiff, Laura Mejia ("Plaintiff"), is an adult individual residing in Green Acres, Florida, and is a "consumer" as the term is defined by 15 U.S.C. § 1692a(3), and is a "person" as defined by 47 U.S.C. § 153(10).

5. Defendant Midland Credit Management, Inc. (“Midland”), is a business entity with an address of 84 State Street, Boston, Massachusetts 02109 operating as a collection agency, and is a “debt collector” as the term is defined by 15 U.S.C. § 1692a(6), and is a “person” as defined by 47 U.S.C. § 153(10).

6. Does 1-10 (the “Collectors”) are individual collectors employed by Midland and whose identities are currently unknown to the Plaintiff. One or more of the Collectors may be joined as parties once their identities are disclosed through discovery.

7. Midland at all times acted by and through one or more of the Collectors.

ALLEGATIONS APPLICABLE TO ALL COUNTS

A. The Debt

8. The Plaintiff allegedly incurred a financial obligation (the “Debt”) to an original creditor (the “Creditor”).

9. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes and which meets the definition of a “debt” under 15 U.S.C. § 1692a(5).

10. The Debt was purchased, assigned or transferred to Midland for collection, or Midland was employed by the Creditor to collect the Debt.

11. The Defendants attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C. § 1692a(2).

B. The Facts

12. Within the last year, Midland contacted Plaintiff in an attempt to collect the Debt.

13. At all times mentioned herein, Midland contacted Plaintiff by placing calls to Plaintiff’s cellular phone, number 561-xxx-0489, using an automated telephone dialer system (“ATDS”) with an artificial or prerecorded voice.

14. When Plaintiff answered such calls from Midland, she would hear a prerecorded message instructing her to “please hold”, followed by Plaintiff being connected to a live representative.

15. Frustrated with the frequency of the automated calls, during a communication that took place in the month of November 2013, after being connected to a live representative Plaintiff requested that Midland cease calling her cellular phone.

16. Despite Plaintiff’s request, Midland continued to harass Plaintiff with automated calls to her cellular phone at a rate of five to six calls on a daily basis

17. Upon information and belief, Plaintiff did not provide her express consent to Midland or to Creditor to place ATDS calls to her cellular telephone.

COUNT I
VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692, et seq.

18. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

19. The Defendants’ conduct violated 15 U.S.C. § 1692d in that Defendants engaged in behavior the natural consequence of which was to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt.

20. The Defendants’ conduct violated 15 U.S.C. § 1692d(5) in that Defendants caused a phone to ring repeatedly, with the intent to annoy and harass.

21. The Defendants’ conduct violated 15 U.S.C. § 1692f in that Defendants used unfair and unconscionable means to collect a debt.

22. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

23. The Plaintiff is entitled to damages as a result of Defendants’ violations.

COUNT II
VIOLATION OF THE MASSACHUSETTS CONSUMER PROTECTION ACT,
M.G.L. c. 93A § 2, et seq.

24. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

25. The Defendants employed unfair or deceptive acts to collect the Debt, in violation of M.G.L. c. 93A § 2.

26. Defendants' failure to comply with these provisions constitutes an unfair or deceptive act under M.G.L. c. 93A § 9 and, as such, the Plaintiff is entitled to double or treble damages plus reasonable attorney's fees.

COUNT III
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

27. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

28. At all times mentioned herein and within the last four years, Defendants called Plaintiff on her cellular telephone using an ATDS and/or by using a prerecorded or artificial voice.

29. Plaintiff instructed Defendants to stop all calls to her and cease calling her cellular telephone.

30. Regardless, Defendants continued to place automated calls to Plaintiff's cellular telephone using a prerecorded voice knowing that it lacked consent to call her number. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

31. The telephone number called by Defendants was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

32. The calls from Defendants to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

33. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

34. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT IV
INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

35. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. The Restatement of Torts, Second, § 652(b) defines intrusion upon seclusion as, “One who intentionally intrudes...upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person.”

37. Massachusetts further recognizes the Plaintiff’s right to be free from invasions of privacy, thus Defendants violated Massachusetts state law.

38. The Defendants intentionally intruded upon Plaintiff’s right to privacy by continually harassing the Plaintiff with the above referenced phone calls.

39. The telephone calls made by Defendants to the Plaintiff were so persistent and repeated with such frequency as to be considered, “hounding the plaintiff,” and, “a substantial

burden to her existence,” thus satisfying the Restatement of Torts, Second, § 652(b) requirement for an invasion of privacy.

40. The conduct of the Defendants in engaging in the illegal collection activities resulted in multiple invasions of privacy in such a way as would be considered highly offensive to a reasonable person.

41. As a result of the intrusions and invasions, the Plaintiff is entitled to actual damages in an amount to be determined at trial from Defendants.

42. All acts of Defendants and its agents were committed with malice, intent, wantonness, and recklessness, and as such, Defendants are subject to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against Defendants:

1. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against Defendants;
2. Costs of litigation and reasonable attorney’s fees pursuant to 15 U.S.C. § 1692k(a)(3) against Defendants;
3. Double or treble damages plus reasonable attorney’s fees pursuant to M.G.L. c. 93A § 3(A);
4. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
5. Actual damages from Defendants for the all damages including intentional, reckless, and/or negligent invasions of privacy in an amount to be determined at trial for the Plaintiff;
6. Punitive damages; and
7. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: January 16, 2014

Respectfully submitted,

By /s/ Sergei Lemberg

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